



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

AES Londonderry, LLC
21 North Wentworth Avenue
Londonderry, NH 03053

ADMINISTRATIVE ORDER
BY CONSENT
No. ARD 04-004

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Air Resources Division to, and with the consent of, AES Londonderry, LLC (AESL) pursuant to RSA 125-C:15. This Administrative Order by Consent is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302-0095.
2. AESL is a limited liability corporation registered with the New Hampshire Secretary of State's Office, having a mailing address of 21 North Wentworth Avenue, Londonderry, New Hampshire 03053.

C. STATEMENTS OF FACTS AND LAW

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15, I authorizes the Commissioner to issue orders of abatement with a compliance schedule for violations of RSA 125-C and rules promulgated pursuant thereto.
3. AESL owns and operates a 720 MW Combustion Turbine Facility located in Londonderry, NH.
4. On April 26, 1999 DES issued a Joint Federal Prevention of Significant Deterioration (PSD) EPA PSD Permit No: 045-121NH11 and a State of New Hampshire Temporary Permit FP-T-0037 for a 720 MW Combustion Turbine Facility to AES Londonderry, L.L.C. ("the Permit"). The Permit was amended September 7, 2001 and reissued August 22, 2002. The Permit has an expiration date of October 31, 2003
5. Pursuant to Env-A 607.08 and 608.02 upon the filing of a timely and complete application

prior to the expiration of a temporary permit the right to operate shall continue, under the terms and conditions of the expired temporary permit, pending the department's decision on the application. For a source or device that has been issued a temporary permit, an application for a state permit to operate shall be considered timely if it is received by the department at least 90 days prior to the designated expiration date of the temporary permit.

6. On April 15, 2003, AESL filed a timely application for a state permit to operate.
7. On July 14, 2003, AESL filed a timely application for a Title V permit.
8. By letter dated July 31, 2003, AESL requested re-issuance of the Permit.
9. Condition III. AA. of the Permit requires that within one year of startup of the facility, AESL shall propose and DES shall establish emission limits for CO, NO_x and opacity during periods of startup and shutdown.
10. Condition VI.A. Table 4 of the Permit limits the maximum rate of CO in lb/hr to 95.7 on natural gas and 335.2 on fuel oil
11. Condition VI.B. Table 5 of the Permit establishes maximum 12 month rolling emission limits for emissions of Carbon Monoxide from Combustion Turbine #1 and Combustion Turbine #2. Specifically, Table 5 sets maximum limits of 687.4 TPY on natural gas, 241.4 TPY on fuel oil, and 928.8 TPY for the combined fuels.
12. On April 15, 2003, AESL submitted to DES an application to revise the emission limits for CO in the Permit as a result of AESL's decision to defer construction of distillate fuel firing capacity. In that application, AESL converted the eleven month CO limit applicable to natural gas burning to a rolling twelve month limit of 749.9 tons.
13. Condition XVII. Malfunction of the Permit requires AESL to notify DES within 8 working hours following any failure of air pollution control equipment, process equipment, or of a process to operate in a normal manner, which results in an increase in emissions above any allowable emission limit stated in this permit. In addition, Condition XVII requires AESL to notify DES in writing within 15 (fifteen) days of any such failure.
14. AESL submitted a start-up/shutdown plan dated October 16, 2003.
15. On April 15, 2004, AESL submitted its annual emissions statement for calendar year 2003 indicating an exceedance of the consecutive 12-month CO emission limit. In the submittal, AESL reported that its combined emissions of CO from Combustion Turbine #1 and Combustion Turbine #2 equaled 778.68 tons.
16. On April 22, 2004 AESL submitted a letter stating, among other things, that it had exceeded the twelve month rolling CO emissions limit in Condition VI.B., Table 5 of the Permit for the period ending March 31, 2004 and that it had failed to report malfunctions in accordance with the Permit.
17. On April 27, 2004, DES and AESL representatives held a meeting to discuss the CO emissions exceedances.

18. On May 7, 2004, McLane Law Firm, on behalf of AESL, submitted a proposed compliance plan for addressing CO emissions.
19. On May 20, 2004, McLane Law Firm, on behalf of AESL, submitted a detailed report of malfunctions that occurred at the facility between April 2003 and February 2004. The report outlined a number of design defects, equipment failures and control system errors that caused the facility to shutdown and then restart, and prolonged low-load operations. In addition, the report quantified the excess CO emissions.
20. A meeting was held between AESL, its representatives and DES on May 24, 2004 to discuss the May 20, 2004 submittal.

D. DETERMINATION OF VIOLATIONS

1. AESL has violated Condition VI.B Table 5 of the Permit by exceeding the maximum allowable consecutive twelve month CO emission limit.
2. AESL has violated Condition XVII of the Permit by failing to report instances at the facility when the process failed to operate in a normal manner and which resulted in an increase in emissions due to such failure.

E. ORDER

Based on the above findings, DES hereby orders AESL, and AESL agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. AESL shall not emit greater than 835.01 tons of CO in any consecutive 12-month period from June 30, 2004 to November 31, 2004.
2. Beginning December 1, 2004, AESL shall at all times comply with the emission limit of 749.9 tons of CO during any consecutive 12-month period.
3. AESL shall submit a monthly report of its monthly and consecutive twelve (12) month totals of CO emissions to DES. Each submittal shall be postmarked within 15 days after the end of each month. The first submittal, covering CO emissions during June 2004, shall be postmarked by July 15, 2004.
4. No later than July 15, 2004, AESL shall submit to DES a revised startup/shutdown compliance plan proposing startup procedures, emission limits and duration limits. The proposed plan shall also include, but not be limited to: the sequence of events during startup, operating conditions and data collection and reporting requirements for associated emissions, hourly emission data, and other supporting data.

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:


Mary Ruel, Enforcement Section Supervisor
Compliance Bureau
DES Air Resources Division
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095
Phone: (603) 271-6795
Fax: (603) 271-1381
e-mail: mrue@des.state.nh.us

F. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, AESL agrees that this Order shall apply to and be binding upon AESL, its officers, directors, successors, and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction. This Administrative Order by Consent sets forth all requirements to be imposed by DES upon AESL with respect to the matters identified in Paragraphs D.1 and D.2 based upon the facts set forth herein.
2. By execution of this Administrative Order by Consent, AESL waives any right to appeal this Administrative Order by Consent provided by any statute, rule or common law, including without limitation the right to appeal to the Air Resources Council, and waives any right to object to its entry by a court of competent jurisdiction. In any proceeding before DES to enforce this Order, AES agrees not to challenge the validity of any provision of this Order. Also, in any future proceeding by DES assessing the compliance history of AES and alleging violations of the New Hampshire Code of Admin. Rules or statutes identical to the gravamen of the violations alleged in Paragraphs D.1 and 2 of this Order, AESL acknowledges, without admission of fact or law, DES's authority to assert that such violation(s) constitute a repeat violation under RSA 125-C:5, I-b(c).
3. The parties have entered into this agreement to avoid the time and cost of litigation. Except as described in Paragraph F.2 above, this Order shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by AESL; (ii) an admission by AESL or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense AESL might raise in any third party proceeding.

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AES LONDONDERRY, LLC



Duly Authorized

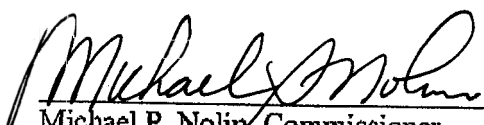
06/07/04
Date

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

 for RRS

Robert R. Scott, Director
Air Resources Division

6-08-04
Date



Michael P. Nolin, Commissioner
Department of Environmental Services

06 09 04
Date

cc: G. Hamel, DES Legal Unit
R. Kurowski, EPA Region I
D. Caron, Chairman of Council Town of Londonderry
Enforcement File
AFS # 3301600782